IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 195 of 1997.

Reserved on: 13.4.2007.

Decided on: 1.6.2007.

Mohan Lal.

… … … Petitioner.

Versus

Himachal Pradesh State Forest Corporation & Others .

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Dev Darshan Sud, J.
The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner: **Mr. Shrawan Dogra, Advocate.**

For Respondents No.1 to 3: Mr. N.S. Chandel, Advocate.

Rajiv Sharma, Judge:

This petition is filed against the judgment of H.P. State Administrative Tribunal in O.A. No.1430 of 1996, dated 11.3.1997.

The brief facts necessary for adjudication of this petition are that the petitioner was engaged as Supervisor on daily wages basis with effect from 1st June, 1989. The primary duty of the petitioner was to supervise the work of daily wage labourers

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Whether reporters of local papers may be allowed to see the judgment? Yes.

working in the Forests whether directly employed by the Corporation or by the contractors.

The petitioner was issued a memo on 21.6.1996 alongwith proforma respondents No.4 and 5 who were working as daily wages chowkidars on the two timber lots of the Corporation. The gist of the memo dated 21.6.1996 was that due to the absence of the petitioner the timber of road depot had been stolen on the intervening night of 15th and 16th May, 1996 causing huge loss to the Corporation. The petitioner by way of this memo was directed to explain his position as to why the loss caused due to the theft should not be recovered from him and further why his services be not dispensed with from the work of daily wages basis. The petitioner was granted 5 days time to file reply to memo dated 21.6.1996. The petitioner filed a detailed reply to the memo on 26.6.1996 and submitted there in that he was working as Supervisor and he went to his home in the evening after performing his duties on 14.5.1996 and fell ill due to dysentery and thereafter he could not attend the duties on 15th-16th May, 1996. The petitioner has explained in his reply that during the night it was duty of chowkidars to look after the timber lots. The petitioner's services were dispensed with immediate effect vide memo dated 6th July, 1996. The petitioner alongwith proforma respondents No.4 and 5 approached the H.P. State Administrative Tribunal. The petitioner has averred in his original application that his services have been terminated without following the principles of natural justice and it was incumbent

upon the Corporation to institute regular inquiry to look into the alleged misconduct.

The respondent-Corporation in its reply to the original application has stated that after the receipt of information about theft, the Sub Divisional Manager has conducted immediate inquiry.

The H.P. State Administrative Tribunal dismissed the original application on 11th March, 1997.

Mr. Shrawan Dogra has strenuously argued that the judgment of the learned Tribunal is not sustainable. Mr. N.S. Chandel has supported the judgment of the Tribunal while appearing on behalf of the respondent-Corporation.

I have perused the record carefully and heard the parties.

The contention of the petitioner is that serious charges had been leveled against him with regard to alleged theft which took place on the intervening night of 15-16th May, 1996 and a regular inquiry was to be instituted after affording reasonable opportunity to the petitioner. The question which needs consideration in this petition is whether a regular inquiry is to be instituted against the daily waged employee charged with the serious misconduct, he admittedly having put in more than 8-9 years service uninterruptedly. The petitioner had been working as Supervisor with the respondent-Corporation for the last 8 to 9 years. Nothing has come on record to show that the petitioner had at any given point of time been directed to look after the timber lots during the night hours. The petitioner was discharging his duties

from 9.00 A.M to 5.00 P.M. The Tribunal holds that preliminary inquiry was conducted by Sub Divisional Manager after the receipt of complaint of the theft which occurred on the intervening night of 15-16th May, 1996. This inquiry was just a fact finding inquiry to see prima facie whether any misconduct had been committed by an employee or not on the basis of which regular inquiry could be ordered. There is nothing on record to suggest that during the course of preliminary inquiry, the petitioner-workman was ever associated. The barest minimum which was expected from the Corporation was to put the adverse material before the petitioner to enable him to answer the same. The Corporation was to make available every adverse material to the petitioner to have his version. The petitioner without being associated with the preliminary inquiry, the report of which has not been placed on record, has been issued show cause notice vide Annexure P-3 on 21.6.1996. The negligence could be attributed to the petitioner only if there was some entrustment in respect of the timber lots made in writing to the petitioner. The notice does not disclose that any preliminary inquiry has been conducted against the petitioner regarding the charge of alleged theft of timber in the month of May, 1996.

The notice Annexure P-3 was vague and not capable of being replied to satisfactorily. There is no mention of the volume of timber which is alleged to have been stolen and it has not been explained how much loss the Corporation has suffered due to theft. The petitioner was granted only 5 days time to file the

reply to be submitted to the Assistant Manager. In the notice itself, the petitioner has been directed to explain his position as to why loss accrued due to the theft should not be recovered from him and why his services be not dispensed with as daily wages Supervisor. Nothing has been stated about the amount which was to be paid by the petitioner due to the alleged theft. The Corporation was to call for the reply of the petitioner only with regard to the alleged misconduct, but the petitioner has been directed to explain in his reply why his services may not be dispensed with as daily wages worker. A reading of the notice shows that the Corporation has pre-judged the entire issue with regard to-

a) loss suffered without quantifying the same; and

b) the petitioner was to be terminated and that what was to follow was a mere formality.

The petitioner filed reply to the show cause notice and disputed the version of the Respondent-Corporation. Once there was a serious dispute with regard to the nature of the duties performed by the petitioner and his role, it was necessary for the Corporation to institute a regular inquiry in accordance with the principles of natural justice. The petitioner has explained that he was absent on the intervening night of 15th-16th May, 1996 and that there was no written order to the petitioner to be present during night since he was to discharge his duties between 9.00 A.M. to 5.00 P.M.

The respondent-Corporation vide memo dated 6.7.1996 terminated the petitioner on the ground of absence from duties

and also for putting the Forest Corporation to loss of lacs of rupees. The basis for issuance of memo dated 6th July, 1996 is the inquiry by Sub Divisional Manager and his own statement. So far as the inquiry of the Sub Divisional Manager is concerned, nothing has come on record that the petitioner was ever associated during the course of inquiry. The issue with regard to the statement of the petitioner has come only in the reply field by the respondent-Corporation to the original application that applicants No.2 and 3 arrayed therein have given their statements admitting their guilt. It is also not clear from the contents of memo dated 6.7.1996 when the statements of admission were made by proforma respondents No.4 and 5. Were these made during the course of inquiry or independent of it? This Court is of the opinion that once there were complicated questions of facts involved, it was incumbent upon the Corporation to hold a regular inquiry against the petitioner. The mandatory requirement of law was to have a charge sheet issued and a regular inquiry conducted and the requirements of law thereafter to be complied with before any action was taken against him.

In the present case, the Corporation has in its show cause notice pre-judged the guilt of the petitioner and unilaterally came to the conclusion that the loss caused was attributable to the petitioners and accordingly, the petitioners services were to be dispensed with. The petitioner has specifically drawn the attention of the Administrative Tribunal to two judgments, i.e.

Maharashtra General Kamgar Union Vs. A.K. Co-op. Housing Society Ltd. and others, 1994 Labour Industrial Cases 1647 as well as **Kuldip Singh Vs. State of H.P. and others,** I.L.R. (H.P. Series) 1987, page 629 project that even in the case of daily waged employees, inquiry has to be instituted. The learned Tribunal has failed to take into consideration the ratio laid down in these two judgments. The Tribunal while considering the two judgments has come to the following conclusion:-

> **"We have no dispute with the principles laid down in the aforesaid cases relied upon by the learned counsel for the applicant. However, the facts and circumstances narrated above pertaining to the instant case does indicate though no regular departmental enquiry was conducted against either of the applicants yet semblance thereof has been carried out inasmuch as that the respondent-Corporation has conducted a preliminary enquiry and thereafter having satisfied itself as to the nature of defaultation committed by the applicants, they had in writing vide Annexure-A informed each one of the applicants of the proposed action, disclosed to each one of them the material to be used against them and they have been afforded opportunity to explain their conduct and submit their view point. It was consequent to the aforesaid explanation sought for from each one of the applicants that their view point was taken into consideration by the Respondent-Corporation and ultimately in view of the grave nature of the offence committed in relation to the mis-conduct of the applicant causing heavy loss**

to the respondents because of the negligence of each one of them that they were disengaged from service."

The learned Tribunal has mis-directed itself on both facts and law while concluding that only semblance of inquiry was sufficient instead of regular inquiry. The mandatory requirement of law is compliance to the conditions stipulated and not a semblance as noticed by the Tribunal. The Tribunal has missed a very vital issue that the petitioner has already put in more than 8 years service with the Corporation and very serious charge has been leveled against him, which could be established by a regular inquiry. The preliminary inquiry held behind the back of the petitioner and issuance of show cause notice cannot be a substitute for regular inquiry or a compliance with Article 14 of the Constitution of India. There is nothing on record to establish such a course of action having been undertaken. Thus, the findings recorded by the Tribunal that it was not necessary to hold regular inquiry against the petitioner are contrary to law and are liable to be quashed and set aside.

Even the show cause notice issued to the petitioner was not precise and the same was incapable of being replied by the petitioner effectively. The petitioner has been granted only 5 days time to file the reply. Once the petitioner's reply has been received by the Corporation, the same was required to be considered with due application of mind. There is no reference of the contents of reply filed by the petitioner to the show cause notice. Even the findings of the preliminary inquiry are not

recorded in the communication dated 6.7.1996. The explanation of the petitioner concerning his absence has not been dealt with as submitted by him in his reply. There is no mention of the amount in the show cause notice issued to the petitioner but in the communication dated 6.7.1996 it has been stated that the Corporation has suffered a loss to the tune of a few lacs. It has come on the record that after the theft was detected; an F.I.R. was also registered on May 16, 1996. What happened to the FIR, were any arrest made, has not been mentioned anywhere in the pleadings. The Corporation should have at least waited till the out-come of the investigation on the basis of FIR dated 16th May, 1996.

It is settled law by now that the adverse material which is gathered during the course of inquiry is to be supplied to the delinquent. In the present case, the material collected against the petitioner was not supplied to him thereby seriously prejudicing him. It is also evident that though one of the bases for dispensing with the services of the petitioner is the inquiry report, but the same has not been made available to the petitioner.

The authority at the time of issuance of show cause notice has pre-judged the entire issue resulting in serious prejudice to the petitioner and grave violation of the principles of natural justice. The act of calling the petitioner's explanation why his services should not be dispensed with is actuated with legal malafidies.

The order whereby the petitioner's services have been dispensed with also suffers from substantive as well as procedural impropriety. The Divisional Manager has solely relied upon the report of Sub Divisional Manager as well as the statement as mentioned in order dated 6.7.1996 without applying his own mind. It was incumbent upon him to discuss at least the barest minimum contents of the report in the office order dated 6.7.1996. He has mechanically passed the order and has not even cared go through the record as to whether at any given time, the petitioner had made any admission of guilt or the circumstances in which the statement was given.

Though it has come in the reply filed by the Corporation before the Tribunal that only proforma respondents No.4 and 5 admitted their guilt. The up-shot of the above discussion is that where serious allegations are leveled against any employee including the workmen appointed on daily wages basis, the same are to be looked into by holding a regular inquiry. During the course of inquiry reasonable opportunity is to be provided to the employee to defend himself effectively. As far as regularly appointed employees are concerned, the inquiry is to be conducted as per their own service Rules governing the discipline, but so far as the workmen appointed on daily wages are concerned, the principles as contained in the disciplinary Rules are to be followed to avoid mis-carriage of justice. This Court is satisfied that the petitioner has not been afforded a

reasonable opportunity of being heard during the course of the proceedings which culminated into his dismissal.

It will be appropriate to extract the relevant portion of the memo (Annexure P-3) dated 21st June, 1996 on the basis of which the petitioner's explanation was sought.

> **"……. From this it is clear that this theft has taken place due to your negligence and un-responsible work, therefore you should explain your position as to why the loss occurred due to this theft should not be recovered from you and why your services be not dispensed with from the work of daily wager basis. Your reply in this behalf should reach within 5 days in this office through the Assistant Manager failing which further necessary action against you should be taken without any further intimation.**
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> **The acknowledgement be sent through Asstt. Manager, Nankhari."**

In the memo (Annexure P-5) whereby the petitioner's services have been dispensed with on 6.7.1996, the following reasons are mentioned:-

> **"As per the enquiry of Sub-Divisional Manager and that of your own statement it is clear that the occurrence of theft has been taken place due to your negligence and as a result of which the Forest Corporation has put in loss of lack of rupees. Therefore, on account of your absence from the duties and also to put the Forest Corporation in loss of lac rupees your services are hereby dispensed with immediately.'**

The allegation with regard to petitioner's absence was never mentioned in the memo calling for his explanation on 21.6.1996.

In **Union of India v. T.R. Verma A.I.R. 1957 S.C. 882** the Hon'ble Supreme Court has held that :-

> **"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."**

The expression 'reasonable opportunity' has been explained by the Hon'ble Supreme Court in **M/s. Fedco (P) Ltd. and another v. S.N. Bilgrami and others AIR 1960 Supreme Court 415** as under:-

> **"The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Court to decide whether an opportunity has been given and whether that opportunity has been reasonable. In the present case, a notice to show cause against the proposed order was given; it was stated in the notice that the ground**

on which the cancellation was proposed was that the licences had been obtained fraudulently; and later on a personal hearing was given. It must therefore be held that the requirement that an opportunity to be heard must be given was satisfied. What the petitioners' Counsel strenuously contends however that is though an opportunity was given that opportunity was not reasonable. In making this argument he had laid special stress on the fact that particulars of the fraud alleged were not given and an opportunity to inspect the papers though repeatedly asked for was not given. It is now necessary to consider all the circumstances in order to arrive at a conclusion whether the omission to given particulars of fraud and inspection of papers deprived the petitioners of a reasonable opportunity to be heard.

There can be no invariable standard for "reasonableness" in such matters except that the Court's conscience must be satisfied, that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exit they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause against such

proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question."

It has been held in **Ram Chandra Chaudhuri v. Secretary to Govt. of West Bengal and others AIR 1964 Calcutta 265** that:-

"Point (3). Conscious as I am that a plea of mala fide rarely succeeds I find that in the present case, the circumstances attending the impugned order are glaring enough to substantiate the allegation.

It is commonplace to state that mala fides does not necessarily involve a malicious intention. It is enough if the aggrieved party establishes:

(i) that the authority making the impugned order did not apply its mind at all to the matter in question (Vide L.J.J. D'Souza v. State of Bombay, (1956) SCR 382 (387): (S) AIR 1956 SC 531 at p.534); or (ii) that the impugned order was made for a purpose or upon a ground other than what is mentioned in the face of the order of Puranlal Lakhanpal v. Union of India AIR 1958 SC 163 (172). These principles have been applied by the Supreme Court in a case of reversion of a Government servant in the case of Sukhbans v. State of Punjab, AIR 1962 SC 1711, to which I shall have occasion to refer more fully hereafter.

In my opinion, the Petitioner before me has succeeded in establishing both."

The Hon'ble Supreme Court in **Calcutta Dock Labour Board and others v. Jaffar Imam & Ors. AIR 1966 Supreme Court 282** has held hat whenever an employer desires to take disciplinary action against his employees on the ground that they being guilty of mis-conduct, it is absolutely essential for the employer to hold a proper inquiry. The Supreme Court has opined as under:-

"There can be no doubt that when the appellant purports to exercise its authority to terminate the employment of its employees such as the respondents in the present case, it is exercising authority and power of a quasi-judicial character. In cases where a statutory body or authority is empowered to terminate the employment of its employees, the said authority or body cannot be heard to say that it will exercise its powers without due regard to the principles of natural justice. The nature or the character of the proceedings which such a statutory authority or body must adopt in exercising its disciplinary power for the purpose of terminating the employment of its employees, has been recently considered by this Court in several cases: vide the Associated Cement Companies Ltd;, Bhupendra Cement Works, Surajpur v. P.N. Sharma, Civil Appeal No.44 of 1964, dated 9-12-1964: (AIR 1965 SC 1595) and Bhagwan v. Ram Chand, Civil Appeal No. 764 of 1964, dated 1-3-1965: (AIR 1965 SC 1767), and it has been held that in ascertaining the nature of

such proceedings with a view to decide whether the principles of natural justice ought to be followed or not, the tests laid down by Lord Reid in Ridge v. Baldwin, 1964 AC 40, are relevant. In view of these decisions, Mr. Sen has not disputed this position and we think, rightly.

Even in regard to its employees who may have been detained under the Act, if after their release the appellant wanted to take disciplinary action against them on the ground that they were guilty of misconduct, it was absolutely essential that the appellant should have held a proper enquiry. At this enquiry, reasonable opportunity should have been given to the respondents to show cause and before reaching its conclusion, the appellant was bound to lead evidence against the respondents, give them a reasonable chance to test the said evidence, allow them liberty to lead evidence in defence, and then come to a decision of its own. Such an enquiry is prescribed by the requirements of natural justice and an obligation to hold such an enquiry is also imposed on the appellant by Cl. 36(3) of the Scheme of 1951 and Cl. 45(6) of the Scheme of 1956. It appears that in the present enquiry, the respondents were not given notice of any specific allegations made against them, and the record clearly shows that no evidence was led in the enquiry at all. It is only the detention orders that were apparently produced and it is on the detention orders alone that the whole proceedings rest and the impugned orders are founded. That being so, we feel no hesitation in holding that the Court of Appeal was perfectly

right in setting aside the respective orders passed by the two learned single Judges when they dismissed the three writ petitions filed by the respondents."

Again in **State of Orissa v. Dr. (Miss) Binapani Dei and others AIR 1967 Supreme Court 1269** it was held that even an administrative order which involves civil consequences, has to be passed consistently with the rule of natural justice. Their Lordships have held as under:-

"It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order while involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right insetting aside the order of the State."

In **M. Chinnappa Reddy v. State of Andhra Pradesh and others AIR 1969 Andhra Pradesh 234** it has been held that :-

"The only contention raised by Shri P. Chennakesava Reddy, the learned counsel for the petitioner, is that the charge memo, served upon the petitioner indicates the proposed punishment of dismissal from service. It is a gross violation of the procedure contemplated under the rules and is contrary to the provisions of Article 311 of the Constitution. The Sub-Collector had prejudged the issue and consequently, the whole proceeding is vitiated. In support of this contention, he relied upon the following decisions: S. Manickam v. Supdt. Of Police, Nilgiris, AIR 1964 Mad 375; Mohan Das v. Supdt. Of Police, Khammameth, 1967-1 Andh WR 156; and State of Andhra Pradesh v. R.H. Khan, 1967-2 Andh WR 121. Although this contention has not been raised anywhere before any of the tribunals, nor was it raised specifically in the petition, even then I allowed the learned advocate to raise that point because, in my opinion, that goes to the very root of the question. It is now fairly settled that at the initial stage when charges are framed and served upon the delinquent officer, the punishing authority or the inquiry office should not propose what punishment ultimately he is to be given. That is not the stage when any opinion can either be formed or expressed. It amounts to prejudging the issue, which is always likely to create misapprehension in the mind of the delinquent officer. It is only at the stage when after a proper enquiry the punishing authority forms an opinion that the accused officer has committed the offence that he could propose the punishment and ask the delinquent officer to explain as to

why that punishment should not be imposed. At the initial stage, if the charge framed indicates the proposed punishment, it vitiates the proceedings. The abovesaid decisions clearly decide that point, and with respect, I follow those decisions."

The Hon'ble Supreme Court in a land mark judgment **A.K. Kraipak and others v. Union of India and others AIR 1970 SC 150** has held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The Supreme Court has opined as under:-

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought (1) no one shall be a judge in his own cause (Nemo debet ess judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act

judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, Civil Appeal No.990 of 1968, D/-15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

In **M.L. Gera v. The Chief Engineer, (D), Irrigation Works, Punjab & Chandigarh and others AIR 1973 Punjab &**

Haryana 287 it was held that incorporating the proposed punishment in the notice itself is error in law and violates the principles of natural justice. The Hon'ble Judge has observed as under:

> **"After hearing the learned counsel for the parties, I find substance in both the contentions. The trend of letters exchanged in great haste between the Superintending Engineer and the Executive Engineer on one side and the petitioner on the other goes to show that both these officers were acting in concert and had decided to take action against the petitioner for what was considered to be misconduct on his part in the use of language in his talk with the Executive Engineer on telephone on 17th March, 1964. A charge of not taking interest in his duties was also leveled against the petitioner and he offered his explanation. In regard to the talk on telephone, the petitioner, according to the showing of respondent No.4, had stated that he should first be allowed to say whatever nonsense it was. It appears that both the Executive Engineer and the petitioner were in a bad temper while talking to each other on telephone. Respondent No.4 was personally involved in the matter and it was incorrect on the part of the Chief Engineer to have accepted the comments of this officer on the explanation of the petitioner. In the show-cause notice also, the Chief Engineer specifically stated that the punishment by way of stoppage of increment was proposed to be imposed. Rule 4 covers several kinds of minor punishments and it was improper on the part of the punishing authority**

to have decided before the receipt of the explanation as to what punishment was going to be imposed. There may be cases where on a good cause being shown by way of explanation, a punishment of censure or warning or any other minor punishment would meet the ends of justice. The mention of the proposed punishment in the show-cause notice under Rule 8 was in the circumstances of the present case, an indication of predetermined mind which made the opportunity for explanation a farce."

The Hon'ble Supreme Court in **The Managing Director, U.P. Warehousing Corporation and others versus Vijay Narayan Vajpayee A.I.R. 1980 Supreme Court 840** has held that dismissal of the employee of U.P. Warehousing Corporation in total breach of natural justice was illegal. The Supreme Court has opined as under:-

"The appellant is a Corporation constituted under the Madhya Pradesh State Warehousing Corporation Act (28 of 1956), which was subsequently replaced by the Madhya Pradesh Act 58 of 1962. It is a statutory body wholly controlled and managed by the Government. Its status is analogous to that of the Corporations which were under consideration in Sukhdev Singh's case (ibid). The ratio of Sukhdev Singh's case, therefore, squarely applies to the present case. Even if at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public

employment and the statutory body, the employer could not terminate the services of its employee without due enquiry in accordance with the statutory Regulations, if any in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment. Such an opportunity was denied to the respondent in the instant case. Admittedly, the respondent was not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (opposite party No.1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the Opposite Party No.1 that he relied upon the reports of some persons and the statements of some other persons who were not examined by him. A regular departmental enquiry takes placed only after the charge-sheet is drawn up and served upon the delinquent and the latter's explanation is obtained. In the present case, no such enquiry was held and the order of dismissal was passed summarily after perusing

the respondent's explanation. The rules of natural justice in this case were honoured in total breach. The impugned order of dismissal was thus bad in law and had been rightly set aside by the High Court."

The Hon'ble Supreme Court in **S.L. Kapoor versus Jagmohan and Others (1980) 4 SCC 379** has held that non-observance of natural justice is itself a prejudice caused. The Hon'ble Supreme Court has also laid down in this judgment that merely because the facts are admitted or are undisputable, it does not follow that natural justice need not be observed. Their Lordships of the Hon'ble Supreme Court have opined as under:-

"The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

The distinction between justice being done and being seen to be done has seen emphasized in many cases . . . . . .

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C.J.'s judgment in R. v. Home Secretary, ex. P. Hosenball, where after saying that "the principles of natural

justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice".

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In R. v. Thames Magistrates' Court, ex. P. Polemis, the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to

prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

> **It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same'. That is mixing up doing justice with seeing that justice is done (per Lord Widgery C.J. at page 1375).**

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do

not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.

Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed."

The Hon'ble Supreme Court in **Board of Technical Education, U.P. and others v. Dhanwantri Kumar and others AIR 1991 Supreme Court 271** has held as under:-

"The High Court found that the orders impugned before it were unsustainable for the reason that the students had not been given proper notices. The notices served on them were found by the High Court to be so vague that they could not have effectively defended themselves in the inquiry. In the absence of proper notices, the inquiry which was held laws found by the High Court to be invalid for violation of the rule of natural justice. Accordingly, the high Court directed the appellant-Board to declare the results of the students who had filed the petitions in the High Court.

We have perused the records and heard counsel on both sides. On the peculiar facts and in the special circumstances of these cases, we are of the view that the High Court was justified in coming to the conclusion, which it did, that the notices served on the students were so vague and imprecise that they could not effectively defend themselves in the inquiry."

In **State Bank of India and Others versus D.C. Aggarwal and Another (1993) 1 SCC 13** the Court held that the disciplinary authority while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Their Lordships of Hon'ble Supreme Court have opined as under:-

> **"Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment in writ jurisdiction, but we propose to confine ourselves only to the question of effect of non-supply of CVC recommendations and if the order laws invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settled from a series of decisions of this Court that it leaves one bewildered at times, that such bodies like State Bank of India, who are assisted by a hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself.**
>
> **Reliance was placed on sub-rule (5) of Rule 50 which reads as under:**

> ***"(5) Order made by the Disciplinary Authority or the Appointing Authority as the case may be under sub-rules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any."***

It was argued that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the disciplinary authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the disciplinary authority would hot have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the disciplinary authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of powers for non-supply of the inquiry report but for relying and acting on material which was not

only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. May be that the disciplinary authority has recorded its own finding and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the

High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority."

In **D.K. Yadav versus J.M.A. Industries Ltd. (1993) 3 SCC 259** it was held that action of the authority should be impartial and should be free from even appearance of unfairness, unreasonableness and arbitrariness. Your Lordships of Hon'ble Supreme Court have held that the procedure prescribed for depriving a person of livelihood will be liable to be tested on the anvil of Article 14. Their Lordships of Supreme Court have opined as under on the principle of reasonable opportunity to be afforded to an employee:-

"The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly,

namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill v. Chief Election Commissioner the Constitutional bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation very thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country … they include … rights capable of being enforced or redressed in a civil action …. In State of Orissa v. (Miss) Binapani Dei this Court held that even an administrative order which involvers civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is

taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

In State of W.B. v. Anwar Ali Sarkar per majority, a seven-Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi v. Union of India another Bench of seven Judges held that the substantive procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affect the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently

impartial and meets the requirements of natural justice.

The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity or person would be reduced to animal existence. When it is interpreted that the colour

and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In D.T.C. v. D.T.C. Mazdoor Congress the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employee was set aside.

In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No.13 (2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice."

These principles were further elaborated and expanded in **Dr. Rash Lal Yadav vesus State of Bihar and Others (1994) 5 SCC 267** as under:-

"The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge of his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature

confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an

implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indication to the contrary as in the present case. This Court in A.K. Kraipak v. Union of India after referring to the observations in State of Orissa v. Dr. (Miss) Binapani Dei observed as under: (SCC p.272, para 20)

> **"The aim of the rules of natural justice is to ensure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."**

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness."

The Hon'ble Supreme Court has further elucidated the principles of natural justice in **Kumaon Mandal Vikas Nigam Ltd. versus Girja Shankar Pant and Others (2001) 1 SCC 182** as under:-

> **"Since the decision of this Court in Kraipak case (A.K. Kraipak v. Union of India) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v.**

Baldwin very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances – who then is a reasonable man – the man on the Clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even l n the millennium year. As a matter of fact this Court in the case of Keshav Mills Co. Ltd. V. Union of India upon reliance on the attributes of the doctrine as above-stated as below: (SCC p. 387, para 8)

> ***"8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yardstick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers***

are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in H.K. (on infant), In re. It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin case as 'insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances'. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J. observed in Russell v. Duke of Norfolk:

> ***'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rule under which the tribunal is acting, the subject-matter that is being dealt with and so forth.' "***

While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of

non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action.

While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above, however, do find some support from the decision of this Court in the case of Apparel Export Promotion Council v. A.K. Chopra.

It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial

process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependent upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste; this is however, apart from the issue of bias which would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of Sayeedur Rehman v. State of Bihar seem to be rather apposite. This Court observed: (SCC p. 338, para 11)

> ***"The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated 22-4-1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."***

In **Tarlochan Dev Sharma versus State of Punjab and Others (2001) 6 SCC 260,** where the impugned order was founded on grounds at variance from the one in show cause notice, the same is bad in law. The Supreme Court has opined as under:-

"The show-cause notice alleged only this much that the Municipal Council had purchased a fogging machine of which payment was to be made but the appellant (as President of the Municipality) instructed the Executive Officer not to make the payment and this resulted in "the working of the Municipal Council having been obstructed". The finding arrived at in the impugned order dated 1-10-1999 is different. There is no finding arrived at that the working of the Municipal Council was in any manner obstructed by the appellant having instructed the Executive Officer not to make the payment. The specific stand taken by the appellant in his reply was that the machine had certain inherent defects and was not working properly and hence it was on the advice of the Municipal Council that the appellant had desired the payment not to be made. The finding as to abuse of power is based mainly on the fact that the Executive Officer had prepared a cheque and signed the same on 20-11-1998 and yet the cheque was not presented to the bank resulting in delayed payment to the supplier of the fogging machine. The impugned order also states that the cheque was kept by the appellant in his custody for over two months. These events are subsequent to the date of the show-cause notice i.e. 19-8-1998 as also to the date of the appellant's reply i.e. 8-9-1998. Thus, briefly stated, the content of abuse of power, as stated in the notice dated 19-8-1998 was – asking the Executive Officer not to make payment while the order dated 1-10-1999 is founded on a subsequent event that in spite of the Executive Officer having prepared and signed the cheque

on 20-11-1998, the appellant detained the cheque in his custody for about two months resulting in the payment being delayed and this amounted to abuse of power. There is no finding recorded in the impugned order that the explanation furnished by the appellant was factually incorrect. A President is supposed to act in the best interest of the Municipality which he is heading. In spite of the fogging machine, worth lakhs, having been found by the Executive Officer to be okay in its trial run, if the President was informed of the machine having certain inherent defects, there was nothing wrong in his asking the Executive Officer not to make the payment unless he was satisfied that the machine was fit for the purpose for which it was being purchased, all the more, when the funds for purchasing the machine were made available to the Municipality by the District Planning Board. Even accepting the allegations made against the appellant, as contained in the show-cause notice, to be correct, his decision to withhold the payment may be said to be an erroneous or unjust decision. For this reason alone the appellant cannot be said to be guilty of an abuse of his power. If anyone suffered by delay in payment, it was the supplied and not the Municipality. There is nothing in the show-cause notice or the ultimate order to hold how the act of the appellant had "obstructed the working of Municipal Council" or was "against the interest of the Council". We are, therefore, clearly of the opinion that not only the principles of natural justice were violated by the factum of the impugned order having been founded on

grounds at variance from the one in the show-cause notice, of which the appellant was not even made aware of, let alone provided an opportunity to offer his explanation, the allegations made against the appellant did not even prima facie make out a case of abuse of powers of the President. The High Court was not right in forming an opinion that the appellant was persuading the High Court to judicially review like an appellate court the finding arrived at by the competent authority. The present one is a case where the impugned order is vitiated by perversity. A conclusion of abuse of powers has been drawn from such facts wherefrom such conclusion does not even prima facie flow. The impugned order is based on non-existent grounds. It is vitiated by colourable exercise of power and hence liable to be struck down within the well-settled parameters of judicial review of administrative action."

In **Canara Bank and Others versus Debasis Das and Others (2003) 4 SCC 557** the apex Court has explained the concept, meaning, object, scope and applicability of the natural justice. Their Lordships have explained the principles in the following manner: -

"Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideas and human values.

The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expression "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation.

In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p. 420)

> ***"[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not ear?' "***

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order

affecting those rights. These rules are intended to prevent such authority from doing injustice.

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (Macq at p.8), Lord Cranworth defined it as "universal justice". In James Dunber Smith v. Her Majesty the Queen (AC at p.623) Sir Robort P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial justice", while in Arthur John Spackman v. Plumstead District Board of Works (AC at p.240), the Earl of Selbourne, S.C. preferred the phrase

"the substantial requirement of justice". In Vionet v. Barrett (LJRD at p.41), Lord Esher, M.R. devined natural justice as "the natural sense of what is right and wrong". While, however, deciding Hookings v. Smethwick Local Borad of Health Lord Esher, M.R. instead of using the definition given earlier by him in Vionet case chose to define natural justice as "fundamental justice". In Ridge v. Baldwin (QB at p.578), Harman, L.J., in the Court of Appeal countered natural justice with "fair play inaction", a phrase favoured by Bhagwati, J. in Maneka Gandhi v. Union of India. In H.K. (An Infant), Re (QB at p.630), Lord Parker, C.J. preferred to describe natural justice as "a duty to act fairly". In Fairmount investments Ltd. v. Secy. Of State for Environment Lord Russell of Killowen somewhat picturesquely described natural justice as "a fail crack of the whip" while Geoffrey Lane, L.J. in R. v. Secy. of State for Home Affairs, ex p Hosenball preferred the homely phrase "common fairness".

How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua"

or "nemo debet esse judex in propria causa sua" as stated in Earl of Derby's case that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria cause, quia non potest esse judex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see Boswel's case (Co Rep at p.52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

The impugned order dated 6.7.1996 is not based on due application of mind as well. The competent authority has failed to

notice the variance between the contents of the notice issued to the petitioner, his reply while passing the final order on 6.7.1996.

In **S.N. Chandrashekar and Another versus State of Karnataka and Others (2006) 3 SCC 208,** where a decision was taken without proper application of mind to the requirement of law, the action was held to be bad in law. It was held as under:-

> **"It is now well known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate. (See de Smith's Judicial Review of Administrative Action, 5th Edn., p. 286.)**
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> **The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regards the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment."**

Narinder Mohan Arya versus United India Insurance Co. Ltd. and Others (2006)4 SCC 713 holds that disciplinary proceedings are quasi-criminal in nature. The Supreme Court opined as under: -

> **"In para 13 of the memorial the appellant at the first opportunity raised a contention that the order of the Appellate Authority was not a speaking order at all, besides drawing the attention of the Chairman-cum-Managing Director to the subsequent event namely the judgment and decree passed by the civil court. The said authority again did not apply its mind while passing his order dated 31-3-1981. When such a contention was raised, it was obligatory on the part of the Chairman-cum-Managing Director while exercising its statutory jurisdiction to show that he had applied his mind to the contentions raised. Such application of mind on his part is not apparent from the order. The departmental proceedings are quasi-criminal in nature."**

The same principle has been reiterated in **M.V. Bijlani versus Union of India and Others (2006) 5 SCC 88** as under:-

> **"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into**

consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

The learned author (De Smith) in Judicial Review of Administrative Action has made the following pertinent observations with regard to procedural fairness (Edn. 1995 page 401): -

"Procedural fairness, as we have seen, is no longer restricted by distinctions between "judicial" and "administrative" functions or between "rights" and "privileges". This "heresy was scotched" in *Ridge v. Baldwin*. The term "natural justice" is being increasingly replaced by a general duty to act fairly, which is a key element of procedural propriety.

The duty to act fairly is a general one, governed by the following propositions:-

(1) **Whenever a public function is being performed there is an inference, in the absence of an express requirement to the contrary, that the function is required to be performed fairly.**

(2) **The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interest or when a person has a**

legitimate expectation of being fairly treated.

(3) **The requirement of a fair hearing will not apply to all situations of perceived or actual determent. There are clearly some situations where the interest affected will be too insignificant, or too speculative, or too remote to qualify for a fair hearing. Whether this is so will depend on all the circumstances but a fair hearing ought no longer to be rejected out of hand, for example, simply because the decision-maker is acting in a "legislative" capacity.**

(4) **Special circumstances may create an exception which negatives the interference of a duty to act fairly. The inference can be rebutted by the needs of national security, or because of other characteristics of the particular function. For example, a decision to allocate scarce resources amongst a large number of contenders which needs to be made with dispatch may be inconsistent with an obligation to hold a fair hearing. The inference may also not be drawn if the protection is to be achieved another way. For example, in the case of a**

"legislative" decision, at least where participation is built into the decision-making process elsewhere, the safeguard which would be provided by a fair hearing can be achieved by other means; as in cases where the decision is taken by democratically elected representatives accountable to Parliament or to the electorate for the exercise of the relevant power.

(5) **What fairness requires will vary according to the circumstances. The question of the content for the fair hearing is considered in Chapter 9 below. We shall see that some decisions, while attracting the duty to be fair, will permit no more to the affected person than a bare right to submit representations. In other cases however there will be a right to an oral hearing with the essential elements of a trial. In between these extremes come a large variety of decisions which, because of the nature of the issue to be determined or the seriousness of their impact upon important interests, require some kind of a hearing (which may not even involve oral representations), but not**

anything that has all the characteristics of a full trial.

(6) Whether fairness is required and what is involved in order to achieve fairness is for the decision of the courts as a matter of law. The issue is not one for the discretion of the decision-maker. The test is not whether no reasonable body would have thought it proper to dispense with a fair hearing. The Wednesbury reserve has no place in relation to procedural propriety.

The significance of this approach is that it prima facie imposes on all administrators an obligation to act fairly. Without acknowledging this expressly, the majority of the recent decisions of the courts are in practice no more than conscious or unconscious illustrations of the approach. They can be conveniently examined under the following three headings:

A. Where the term of a statute confirm the inference of fair hearing;

B. Where the inference of a fair hearing is confirmed by the need to safeguard a right or interest;

C. Where the inference of a fair hearing is confirmed by the need to safeguard an

expectation induced by the decision-maker."

The learned author in Judicial Review of Administrative Act (De Smith) has laid stress that prejudicial allegations if made against a person, he must normally, be given particulars of them before the hearing so that he can prepare his answers. The learned author has further elaborated this principle as under:

"If prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers. In order to protect his interests he must also be enabled to controvert, correct or comment on other evidence or information that may be relevant to the decision; indeed, at least in some circumstances there will be a duty on the decision maker to disclose information favourable to the applicant, as well as information prejudicial to his case. If material is available before the hearing, the right course will usually be to give him advance notification; but it cannot be said that there is a hard and fast rule on this matter, and sometimes natural justice will be held to be satisfied if the material is divulged at the hearing, which may have to be adjourned if he cannot fairly be expect ed to make his reply without time for consideration. In deciding whether fairness does or does not require an adjournment in order to allow further time to consider such material and to prepare representations, a court or other decision-maker should take into account the importance of the

proceedings and the likely adverse consequences on the party seeking the adjournment; the risk that the applicant would be prejudiced; the risk of prejudice to any opponent if the adjournment were granted; the convenience of the Court and the interests of justice in ensuring the efficient dispatch of business; and the extent to which the applicant has been responsible for the circumstances leading to the request for an adjournment.

If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked. (p. 441)"

These principles have been applied in the cases noticed by us.

In view of the law laid down by their Lordships of Supreme Court in the above cited judgments, it is clear that the principles of natural justice have not been complied by the respondent-Corporation while dispensing with the services of the petitioner-

workman. The prejudice to the petitioner is writ large in the action taken against him. He has been condemned unheard and has been subjected to the extreme penalty of dismissal without compliance to the principles of natural justice which now form a part of the principles of equality enshrined in Article 14 of the Constitution of India. There is nothing on the record to show or indicate that there was no need for an inquiry as the case was of an exceptional character where such principles could be dispensed with. Rather the entire case relates to one where "semblance" has been treated as actual compliance. This cannot be permitted in the constitutional scheme of our country.

Accordingly, this petition is allowed and the judgment of H.P. State Administrative Tribunal dated 11.3.1997 is quashed and set aside and consequently, memo dated 6th July, 1996 is also quashed and set aside being null and void. The respondents are directed to re-engage the petitioner forthwith as Supervisor with all consequential benefits, i.e. back wages, seniority etc. There shall be no order as to costs.

(Dev Darshan Sud)
Judge

(Rajiv Sharma)
Judge

June 1, 2007 (sck).